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rate icing charges if these have not already been included in the general rate and are in themselves reasonable; *Knudsen-Ferguson Fruit Co. v. Mich. Cent. R. Co.*, 148 Fed. 968. The rate schedules and classifications filed with the Interstate Commerce Commission are binding upon both the shippers and the carriers, *Smith v. Great Northern Ry. Co.* 15 N. D. 195, 107 N. W. 56. By holding itself out voluntarily as ready to ice carload shipments, the plaintiff had brought itself within the supervisory and regulatory provisions of the Act. In the present case the tariff filed with the Commission was uncertain as to the amount to be charged for icing cars, and it would seem that the defendant had contended that this would make the whole provision void, and consequently the carrier could not recover on the basis of the \$2.50 charge. The court, however, applied to the tariff sheet the principle of interpretation familiar in the case of statutes, that where a part is void, it will not invalidate the remainder unless that is so connected with the void part that it is apparent that it was the intention of the legislators to have the whole stand, or none of it. In this case the fact that a part was void for uncertainty did not vitiate the remainder. Consequently the plaintiff was allowed to recover on the basis of the valid charge in the tariff sheet.

CARRIERS—TWO CENT PASSENGER FARE.—An order of the Arkansas Railway Commission carrying out the provisions of a state statute, ARKANSAS LAWS 1907, page 9, established a two cent passenger fare on intrastate passenger traffic. The present case was an appeal by the Commission from an order granting a temporary injunction against the enforcement of the said rate. It was admitted in the case that the complainant railway company had conducted its intrastate passenger traffic in an economical manner. It was further admitted that the effects of carrying out the provisions of the Commission's orders had during a two year's trial shown that the receipts from such traffic had been insufficient to cover legitimate operating expenses, exclusive of any return on the property used. *Held*, the temporary injunction should be affirmed. *Bellamy v. Missouri & N. A. R. Co.* (C. C. A. 8th Circuit, 1914), 215 Fed. 18.

Although the real question before the court was whether the lower court had illegally exercised its discretion in granting a temporary injunction in the case, it became necessary for the court in deciding this question to decide several matters of substantive law involved in questions of this sort. Public service companies are subject to rate regulation, *Munn v. Illinois*, 94 U. S. 113. Such rate regulation cannot however be extended so as to amount to a deprivation of property without due process of law. When the effect of putting into effect rates is clearly such as to amount to preventing the company from making operating expenses, their enforcement can be enjoined, *Covington & L. Turnpike Road Co. v. Sandford*, 164 U. S. 578. When the effect is a matter of doubt, it has sometimes been held that before a court will declare them confiscatory and the regulation unconstitutional, they will have to be tested by experience, and even a temporary injunction has been refused, *Chi., B. & Q. R. Co. v. Dey*, 38 Fed. 656; *Knoxville v. Knoxville Water Co.*, 212 U. S. 1. Where however, experience under such rates has

clearly established the fact that they do not permit the earning of a fair rate of return, such rates will be declared confiscatory, *Northern Pac. Ry. Co. v. Keyes*, 91 Fed. 47. A fortiori, therefore, should rates which have been shown by experience inadequate to cover operating expenses, be held to violate the constitutional prohibition, as in the present case. The Commission however, sought to avoid this by showing that the lines of complainant had been extended after the passing of the order into undeveloped territory. Plants unnecessarily large cannot be expected to be allowed to earn a return on the entire investment, *Boise City I. & L. Co. v. Clark*, 131 Fed. 415. It is noteworthy that the court distinguished such cases from the present case in that in this one the question was not whether any return should be allowed on such investment, but whether the road should be allowed to earn operating expenses on such portion.

CHARITIES—CHARITABLE BEQUEST.—A testator bequeathed \$5,000 to trustees in trust to erect a bronze and granite base for a flagstaff in a city park, the same to bear an inscription that it was in memory of testator's father. Upon a bill brought to construe the will it was held, that the bequest was not within any definition of a charitable use, nor a devotion of the money to charitable purposes, but a mere private trust, violative of the rule against perpetuities. *Morristown Trust Co. v. Mayor of Morristown*, (N. J. 1914) 91 Atl. 736.

In arriving at this conclusion the court adopts the definition of a charity as formulated by GRANT, J., in the leading case of *Jackson v. Phillips*, 96 Mass. 539. The principal case is undoubtedly correct in its decision. What is a charitable use would seem to be a question of little difficulty in the light of the well settled definitions previously established. However, testators often attempt to do strange things. Trusts that have been held valid as devoted to a charitable use vary from a gift to purchase a fire-engine for a town, *Magill v. Brown*, Brightly, 411, to one for the increase and encouragement of good servants, *Loscombe v. Winteringham*, 13 Beav. 87. Provisions for the erection of monuments over the testator's grave have been upheld as being for a humane purpose, *Ford v. Ford's Ex'r*, 91 Ky. 572; *Detmiller v. Hartman*, 37 N. J. Eq. 347; *McIlvain v. Hockaday*, 36 Tex. Civ. App. 1, but a provision directing all the income from the testator's estate to be used for the erection of bronze statues of himself and family, about the premises, was held not to be an educational or charitable bequest. *McCaig v. University of Glasgow* [1907] S. C. 231. A case seemingly in conflict with the preceding and the principal case is *Smith's Estate*, 181 Pa. 109, where the court upheld, as a good charitable use, a gift of \$500,000 to be used in erecting a memorial monument in a public park, inscribed with testator's name and adorned with statues of himself and others, on the ground that the monument was for the beautifying and adornment of the city as well as the elevation and refinement of the people.

CONSTITUTIONAL LAW—AUTHORITY OF PRESIDENT TO WITHDRAW MINERAL LANDS FROM ENTRY.—The President of the United States "in aid of proposed legislation" withdrew from entry 3,000,000 acres of oil land in 1909. In 1910